

AMENDED IN SENATE AUGUST 18, 2009

AMENDED IN SENATE APRIL 29, 2009

SENATE BILL

No. 225

Introduced by Senator Florez

February 23, 2009

An act to amend ~~Sections 41081, 41606, 44229, and Section 44281~~ of, and to add Section 40708.5 to, the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 225, as amended, Florez. Emission reduction credits.

Existing law prohibits the creation of an emission reduction credit from air pollution reductions funded by certain public programs. Existing law creates air quality management districts and air pollution control districts and requires these districts, except as otherwise provided, to establish a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants are to be banked prior to use to offset future increases in emissions.

This bill would authorize a district to create an emission reduction credit from ~~the emission reductions resulting from a marine vessel or locomotive emission reduction~~ project that is funded from both public and private moneys if specified requirements are met.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 40708.5 is added to the Health and Safety Code, to read:

40708.5. (a) A district may authorize the creation of an emission reduction credit from ~~the emission reductions resulting from a project~~ *a marine vessel or locomotive emission reduction project, including an emission capture project*, that is funded from both public and private moneys.

(b) For emission reduction credits authorized pursuant to subdivision (a), the total amount of credits may not exceed 90 percent of the amount of the total emission reductions achieved by the project. Any emission reduction credits resulting from the project in excess of 90 percent shall be retired by the district.

(c) If an emission reduction credit authorized pursuant to this section is sold or otherwise transferred, the credit shall be discounted by 10 percent *when it is sold or otherwise transferred by the initial owner and an additional 10 percent each time the credit is sold or otherwise transferred thereafter.*

(d) This section shall be implemented in a manner consistent with the federal Clean Air Act (42 U.S.C. Sec. 4901 et seq.).

SEC. 2. ~~Section 41081 of the Health and Safety Code, as amended by Section 2 of Chapter 707 of the Statutes of 2004, is amended to read:~~

~~41081. (a) Subject to Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, or with the approval of the board of supervisors of each county included, in whole or in part, within the Sacramento district, the Sacramento district board may adopt a surcharge on the motor vehicle registration fees applicable to all motor vehicles registered in those counties within the Sacramento district whose boards of supervisors have adopted a resolution approving the surcharge. The surcharge shall be collected by the Department of Motor Vehicles and, after deducting the department's administrative costs, the remaining funds shall be transferred to the Sacramento district. Prior to the adoption of any surcharge pursuant to this subdivision, the district board shall make a finding that any funds allocated to the district as a result of the adoption of a county transportation sales and use tax are insufficient to carry out the purposes of this chapter.~~

1 ~~(b) The surcharge shall not exceed six dollars (\$6).~~

2 ~~(c) After consulting with the Department of Motor Vehicles on~~
3 ~~the feasibility thereof, the Sacramento district board may provide,~~
4 ~~in the surcharge adopted pursuant to subdivision (a), to exempt~~
5 ~~from all or part of the surcharge any category of low-emission~~
6 ~~motor vehicle.~~

7 ~~(d) Funds received by the Sacramento district pursuant to this~~
8 ~~section shall be used by that district as follows:~~

9 ~~(1) The revenues resulting from the first four dollars (\$4) of~~
10 ~~each surcharge shall be used to implement reductions in emissions~~
11 ~~from vehicular sources, including, but not limited to, a clean fuels~~
12 ~~program and motor vehicle use reduction measures.~~

13 ~~(2) The revenues resulting from the next two dollars (\$2) of~~
14 ~~each surcharge shall be used to implement the following programs~~
15 ~~that achieve emission reductions from vehicular sources and~~
16 ~~off-road engines, to the extent that the district determines the~~
17 ~~program remediates air pollution harms created by motor vehicles~~
18 ~~on which the surcharge is imposed:~~

19 ~~(i) Projects eligible for grants under the Carl Moyer Memorial~~
20 ~~Air Quality Standards Attainment Program (Chapter 9~~
21 ~~(commencing with Section 44275) of Part 5).~~

22 ~~(ii) The new purchase, retrofit, repower, or add-on of equipment~~
23 ~~for previously unregulated agricultural sources of air pollution, as~~
24 ~~defined in Section 39011.5, within the Sacramento district, for a~~
25 ~~minimum of three years from the date of adoption of an applicable~~
26 ~~rule or standard, or until the compliance date of that rule or~~
27 ~~standard, whichever is later, if the state board has determined that~~
28 ~~the rule or standard complies with Sections 40913, 40914, and~~
29 ~~41503.1, after which period of time, a new purchase, retrofit,~~
30 ~~repower, or add-on of equipment shall not be funded pursuant to~~
31 ~~this chapter. The district shall follow any guidelines developed~~
32 ~~under subdivision (a) of Section 44287 for awarding grants under~~
33 ~~this program.~~

34 ~~(iii) The new purchase of schoolbuses pursuant to the~~
35 ~~Lower-Emission School Bus Program adopted by the state board.~~

36 ~~(iv) An accelerated vehicle retirement or repair program that is~~
37 ~~adopted by the state board pursuant to authority granted hereafter~~
38 ~~by the Legislature by statute.~~

39 ~~(e) Not more than 5 percent of the funds collected pursuant to~~
40 ~~this section shall be used by the district for administrative expenses.~~

~~(f) Except as provided in Section 40708.5, no project funded by the program shall be used for credit under any state or federal emissions averaging, banking, or trading program. Except as provided in Section 40708.5, no emission reduction generated by the program shall be used as marketable emission reduction credits or to offset any emission reduction obligation of any person or entity. Except as provided in Section 40708.5, projects involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment pursuant to a corporate or a controlling board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.~~

~~(g) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.~~

~~SEC. 3.—Section 41606 of the Health and Safety Code is amended to read:~~

~~41606. (a) (1) It is the intent of the Legislature to reduce air pollution from open field burning in the state and to improve air quality and protect the public health through new incentives for biomass facilities to increase their use of agricultural waste that would otherwise be burned in open fields in the state.~~

~~(2) It is the further intent of the Legislature that the initial incentives paid pursuant to this section provide an effective incentive for the use of qualified agricultural biomass purchased from July 1, 2003, through December 31, 2003, inclusive, in order to maximize air quality benefits during the 2003–04 fiscal year.~~

~~(b) For purposes of this section:~~

~~(1) “Qualified agricultural biomass” means agricultural residues that are purchased after July 1, 2003, that historically have been open-field burned in the jurisdiction of the air district from which the agricultural residues are derived, as determined by the air district, excluding urban and forest wood products, that include either of the following:~~

~~(A) Field and seed crop residues, including, but not limited to, straws from rice and wheat.~~

1 ~~(B) Fruit and nut crop residues, including, but not limited to,~~
2 ~~orchard and vineyard pruning and removals.~~

3 ~~(2) “Facility” means any facility located in California that meets~~
4 ~~all of the following criteria:~~

5 ~~(A) As of July 1, 2003, converted and continues to convert~~
6 ~~qualified agricultural biomass to energy.~~

7 ~~(B) Is permitted with best available control technology to reduce~~
8 ~~emissions, has emissions control equipment in good working order,~~
9 ~~and is in compliance with its operating permit, as determined by~~
10 ~~the air pollution control district or air quality management district~~
11 ~~in which the facility operates.~~

12 ~~(C) Demonstrates a significant net increase in utilization of~~
13 ~~qualified agricultural biomass as compared to usage without grant~~
14 ~~moneys pursuant to this section. A “significant net increase” means~~
15 ~~an increase of at least 10 percent in purchases of qualified~~
16 ~~agricultural biomass above the average annual tonnage purchased~~
17 ~~by the facility in the previous five years of operation prior to the~~
18 ~~implementation of the Agricultural Biomass-to-Energy Incentive~~
19 ~~Grant Program pursuant to former Part 3 (commencing with~~
20 ~~Section 1101) of Division 1 of the Food and Agricultural Code,~~
21 ~~as repealed by the act adding this section.~~

22 ~~(e) (1) The State Energy Resources Conservation and~~
23 ~~Development Commission shall, upon determining that a facility~~
24 ~~is eligible for funding, provide incentives to the facility, consistent~~
25 ~~with this section.~~

26 ~~(2) The State Energy Resources Conservation and Development~~
27 ~~Commission shall complete the issuance of incentive payments~~
28 ~~for qualified agricultural biomass purchased from July 1, 2003,~~
29 ~~through December 31, 2003, inclusive, within 90 days of the~~
30 ~~effective date of this section.~~

31 ~~(3) In providing incentives pursuant to this section, the State~~
32 ~~Energy Resources Conservation and Development Commission~~
33 ~~shall provide incentive payments in the amount of ten dollars (\$10)~~
34 ~~for each ton of qualified agricultural biomass received by a facility~~
35 ~~and converted into energy. The State Energy Resources~~
36 ~~Conservation and Development Commission may increase the~~
37 ~~incentive payment for types or sources of qualified agricultural~~
38 ~~biomass that require greater incentives to achieve meaningful~~
39 ~~increases in usage by facilities, as determined by the State Energy~~
40 ~~Resources Conservation and Development Commission.~~

1 ~~(4) Notwithstanding any other provision of law, the receipt of~~
2 ~~incentives pursuant to this section does not make a facility~~
3 ~~ineligible for any other production subsidy, rebate, buydown, or~~
4 ~~other incentive funded through electricity surcharges, except that~~
5 ~~receipt of incentives funded through electricity surcharges shall~~
6 ~~preclude receipt of biomass-to-energy incentives financed by the~~
7 ~~General Fund.~~

8 ~~(5) The State Energy Resources Conservation and Development~~
9 ~~Commission, in consultation with the California Environmental~~
10 ~~Protection Agency, may adopt guidelines governing the incentives~~
11 ~~authorized under this section at a publicly noticed meeting offering~~
12 ~~all interested parties an opportunity to comment. Substantive~~
13 ~~changes to the guidelines may not be adopted without at least 10~~
14 ~~days' written notice to the public. The public notice of meetings~~
15 ~~required by this paragraph may not be less than 30 days.~~
16 ~~Notwithstanding any other provision of law, any guidelines adopted~~
17 ~~pursuant to this section shall be exempt from the requirements of~~
18 ~~Chapter 3.5 (commencing with Section 11340) of Division 3 of~~
19 ~~Title 2 of the Government Code. Adoption of guidelines shall not~~
20 ~~delay the timing of the payment of incentives that are required by~~
21 ~~paragraph (2).~~

22 ~~(6) Awards made pursuant to this section are grants, subject to~~
23 ~~appeal to the State Energy Resources Conservation and~~
24 ~~Development Commission upon a showing that factors other than~~
25 ~~those contained in this section, and any guidelines adopted pursuant~~
26 ~~to this section, were a substantial factor in making the award. Any~~
27 ~~actions taken by an applicant to apply for, become, or remain~~
28 ~~eligible for an award, shall not be the rendering of goods, services,~~
29 ~~or a direct benefit to the State Energy Resources Conservation and~~
30 ~~Development Commission.~~

31 ~~(d) Except as provided in Section 40708.5, facilities receiving~~
32 ~~incentive payments pursuant to this section are not eligible to~~
33 ~~receive emission reduction credits for any qualified agricultural~~
34 ~~biomass for which a facility has received an incentive payment.~~
35 ~~Except as provided in Section 40708.5, generators or suppliers of~~
36 ~~qualified agricultural biomass may not receive emission reduction~~
37 ~~credits for any qualified agricultural biomass for which a facility~~
38 ~~has received an incentive payment. For purposes of this section,~~
39 ~~"emission reduction credits" means a credit for a reduction in the~~
40 ~~emission of an air contaminant that is banked and is available to~~

1 offset increases in emissions pursuant to Section 40709, and the
2 regulations adopted pursuant to that section.

3 SEC. 4. ~~Section 44229 of the Health and Safety Code, as~~
4 ~~amended by Section 4 of Chapter 707 of the Statutes of 2004, is~~
5 ~~amended to read:~~

6 ~~44229. (a) After deducting all administrative costs it incurs~~
7 ~~through collection of fees pursuant to Section 44227, the~~
8 ~~Department of Motor Vehicles shall distribute the revenues to~~
9 ~~districts, which shall use the revenues resulting from the first four~~
10 ~~dollars (\$4) of each fee imposed to reduce air pollution from motor~~
11 ~~vehicles and to carry out related planning, monitoring, enforcement,~~
12 ~~and technical studies necessary for implementation of the California~~
13 ~~Clean Air Act of 1988. Fees collected by the Department of Motor~~
14 ~~Vehicles pursuant to this chapter shall be distributed to districts~~
15 ~~based upon the amount of fees collected from motor vehicles~~
16 ~~registered within each district.~~

17 ~~(b) Notwithstanding the provisions of Section 44241 and Section~~
18 ~~44243, a district shall use the revenues resulting from the next two~~
19 ~~dollars (\$2) of each fee imposed pursuant to Section 44227 to~~
20 ~~implement the following programs that the district determines~~
21 ~~remediate air pollution harms created by motor vehicles on which~~
22 ~~the surcharge is imposed:~~

23 ~~(1) Projects eligible for grants under the Carl Moyer Memorial~~
24 ~~Air Quality Standards Attainment Program (Chapter 9~~
25 ~~(commencing with Section 44275) of Part 5).~~

26 ~~(2) The new purchase, retrofit, repower, or add-on equipment~~
27 ~~for previously unregulated agricultural sources of air pollution, as~~
28 ~~defined in Section 39011.5, for a minimum of three years from~~
29 ~~the date of adoption of an applicable rule or standard, or until the~~
30 ~~compliance date of that rule or standard, whichever is later, if the~~
31 ~~state board has determined that the rule or standard complies with~~
32 ~~Sections 40913, 40914, and 41503.1, after which period of time,~~
33 ~~a new purchase, retrofit, repower, or add-on of equipment shall~~
34 ~~not be funded pursuant to this chapter. The districts shall follow~~
35 ~~any guidelines developed under subdivision (a) of Section 44287~~
36 ~~for awarding grants under this program.~~

37 ~~(3) The new purchase of schoolbuses pursuant to the~~
38 ~~Lower-Emission School Bus Program adopted by the state board.~~

~~(4) An accelerated vehicle retirement or repair program that is adopted by the state board pursuant to authority granted hereafter by the Legislature by statute.~~

~~(e) The Department of Motor Vehicles may annually expend not more than the following percentages of the fees collected pursuant to Section 44227 on administrative costs:~~

~~(1) During the first year after the operative date of this chapter, not more than 5 percent of the fees collected may be used for administrative costs.~~

~~(2) During the second year after the operative date of this chapter, not more than 3 percent of the fees collected may be used for administrative costs.~~

~~(3) During any year subsequent to the second year after the operative date of this chapter, not more than 1 percent of the fees collected may be used for administrative costs.~~

~~(d) Except as provided in Section 40708.5, no project funded by the program shall be used for credit under any state or federal emissions averaging, banking, or trading program. Except as provided in Section 40708.5, no emission reduction generated by the program shall be used as marketable emission reduction credits or to offset any emission reduction obligation of any person or entity. Except as provided in Section 40708.5, projects involving new engines that would otherwise generate marketable credits under state or federal averaging, banking, and trading programs shall include transfer of credits to the engine end user and retirement of those credits toward reducing air emissions in order to qualify for funding under the program. A purchase of a low-emission vehicle or of equipment pursuant to a corporate or a controlling board's policy, but not otherwise required by law, shall generate surplus emissions reductions and may be funded by the program.~~

~~(e) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.~~

~~SEC. 5.~~

~~SEC. 2~~ Section 44281 of the Health and Safety Code, as amended by Section 7 of Chapter 707 of the Statutes of 2004, is amended to read:

44281. (a) Eligible projects include, but are not limited to, any of the following:

1 (1) Purchase of new very low or zero-emission covered vehicles
2 or covered heavy-duty engines.

3 (2) Emission-reducing retrofit of covered engines, or
4 replacement of old engines powering covered sources with newer
5 engines certified to more stringent emissions standards than the
6 engine being replaced, or with electric motors or drives.

7 (3) Purchase and use of emission-reducing add-on equipment
8 that has been verified by the state board for covered vehicles.

9 (4) Development and demonstration of practical, low-emission
10 retrofit technologies, repower options, and advanced technologies
11 for covered engines and vehicles with very low emissions of oxides
12 of nitrogen.

13 (5) Light- and medium-duty vehicle projects in compliance with
14 guidelines adopted by the state board pursuant to Title 13 of the
15 California Code of Regulations.

16 (b) No project shall be funded under this chapter after the
17 compliance date required by any local, state, or federal statute,
18 rule, regulation, memoranda of agreement or understanding, or
19 other legally binding document, except that an otherwise qualified
20 project may be funded even if the State Implementation Plan
21 assumes that the change in equipment, vehicles, or operations will
22 occur, if the change is not required by the compliance date of a
23 statute, regulation, or other legally binding document in effect as
24 of the date the grant is awarded. Except as provided in Section
25 40708.5, no project funded by the program shall be used for credit
26 under any state or federal emissions averaging, banking, or trading
27 program. Except as provided in Section 40708.5, no emission
28 reduction generated by the program shall be used as marketable
29 emission reduction credits or to offset any emission reduction
30 obligation of any person or entity. Except as provided in Section
31 40708.5, projects involving new engines that would otherwise
32 generate marketable credits under state or federal averaging,
33 banking, and trading programs shall include transfer of credits to
34 the engine end user and retirement of those credits toward reducing
35 air emissions in order to qualify for funding under the program.
36 A purchase of a low-emission vehicle or of equipment pursuant
37 to a corporate or a controlling board's policy, but not otherwise
38 required by law, shall generate surplus emissions reductions and
39 may be funded by the program.

(c) The program may also provide funding toward installation of fueling or electrification infrastructure as provided in Section 44284.

(d) Eligible applicants may be any individual, company, or public agency that owns one or more covered vehicles that operate primarily within California or otherwise contribute substantially to the NO_x, PM, or ROG emissions inventory in California.

(e) It is the intent of the Legislature that all emission reductions generated by this chapter shall contribute to public health by reducing, for the life of the vehicle being funded, the total amount of emissions in California.

(f) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

~~SEC. 6.~~

SEC. 3. Section 44281 of the Health and Safety Code, as added by Chapter 707 of the Statutes of 2004, is amended to read:

44281. (a) Eligible projects are any of the following:

(1) Purchase of new very low or zero-emission covered vehicles or covered engines.

(2) Emission-reducing retrofit of covered engines, or replacement of old engines powering covered sources with newer engines certified to more stringent emissions standards than the engine being replaced, or with electric motors or drives.

(3) Purchase and use of emission-reducing add-on equipment for covered vehicles.

(4) Development and demonstration of practical, low-emission retrofit technologies, repower options, and advanced technologies for covered engines and vehicles with very low emissions of oxides of nitrogen.

(b) No new purchase, retrofit, repower, or add-on equipment shall be funded under this chapter if it is required by any local, state, or federal statute, rule, regulation, memoranda of agreement or understanding, or other legally binding document, except that an otherwise qualified project may be funded even if the State Implementation Plan assumes that the change in equipment, vehicles, or operations will occur, if the change is not required by a statute, regulation, or other legally binding document in effect as of the date the grant is awarded. Except as provided in Section 40708.5, no project funded by the program shall be used for credit

1 under any state or federal emissions averaging, banking, or trading
2 program. Except as provided in Section 40708.5, no emission
3 reduction generated by the program shall be used as marketable
4 emission reduction credits or to offset any emission reduction
5 obligation of any entity. Except as provided in Section 40708.5,
6 projects involving new engines that would otherwise generate
7 marketable credits under state or federal averaging, banking, and
8 trading programs shall include transfer of credits to the engine end
9 user and retirement of those credits toward reducing air emissions
10 in order to qualify for funding under the program. A purchase of
11 a low-emission vehicle or of equipment pursuant to a corporate or
12 a controlling board's policy, but not otherwise required by law,
13 shall generate surplus emissions reductions and may be funded by
14 the program.

15 (c) The program may also provide funding toward installation
16 of fueling or electrification infrastructure as provided in Section
17 44284.

18 (d) Eligible applicants may be any individual, company, or
19 public agency that owns one or more covered vehicles that operate
20 primarily within California or otherwise contribute substantially
21 to the NO_x emissions inventory in California.

22 (e) It is the intent of the Legislature that all emission reductions
23 generated by this chapter shall contribute to public health by
24 reducing, for the life of the vehicle being funded, the total amount
25 of emissions in California.

26 (f) This section shall become operative on January 1, 2015.

27 ~~SEC. 7.~~

28 *SEC. 4.* This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or safety within
30 the meaning of Article IV of the Constitution and shall go into
31 immediate effect. The facts constituting the necessity are:

32 In order to expand the creation of emission reduction credits at
33 the earliest possible time, it is necessary that this act take effect
34 immediately.